



April 27, 2001

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County
Frank Crowley Courts Building LB 19
Dallas, Texas 75207-4399

OR2001-1732

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146497.

The Dallas County District Attorney's Office (the "D.A.") received a request for information concerning offense report number 63839, including the complete prosecutor's file; the complaint/information and/or affidavit; the "criminal referral" by the Texas Alcohol Beverage Commission ("TABC"); any arrest warrants; any grand jury records such as transcripts of proceedings; and disposition of the "criminal referral" by TABC. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that all of the submitted information appears to have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is expressly confidential under other law. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). The submitted documents are stamped, "Justice of the Peace Precinct 8 - Place 1," and indicate date and time. If the submitted documents are in fact filed with the court, then except for the emergency medical services reports, they must be released under section 552.022(a)(17).

The D.A. must withhold the emergency medical services reports under section 773.091 of the Health and Safety Code. Section 773.091 provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Accordingly, the D.A. must withhold the submitted EMS records under section 552.101 of the Government Code, except for information required to be released under section 773.091(g).

If all of the submitted documents have not been filed with the court, then they may be withheld from public disclosure under the exceptions in the Public Information Act. Thus, we will consider the exceptions you assert in the event the documents have not been filed with the court.

First, the arrest warrant and probable cause affidavits are information contained in public court records and must be released under section 552.022(a)(17). *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). In addition, included in the information submitted to this office is an autopsy report. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, the autopsy report is a public record and must be released to the requestor.

Next, section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state “[n]o charges were ever filed against the Airport Marina Hotel Inc., and thus, the investigation did not result in a prosecution, conviction, or deferred adjudication.” Based on the information you provided, we conclude that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 at 4 (1976). Section 552.108 does not except from disclosure information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. With the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the information that is excepted by section 552.108 and that is not otherwise confidential by law. Gov’t Code § 552.007.

Lastly, we will consider whether the basic information contained in an offense report is attorney work product that may be excepted from public disclosure under section 552.111. Section 552.111 excepts from public disclosure attorney work product once the litigation has concluded. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney’s mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996).

The second prong of the work product test requires the governmental body to show that the information at issue tends to reveal the attorney’s mental processes, conclusions and legal theories. We have reviewed your arguments and find that you have failed to establish that the basic information tends to reveal the attorney’s mental processes, conclusions and legal theories. Therefore, you may not withhold the basic information as attorney work product under section 552.111 of the Government Code. The D.A. must release the basic information.

In summary, the D.A. must release the arrest warrant, probable cause affidavits, and autopsy report. The D.A. must withhold the EMS reports under section 773.091 of the Health and Safety Code and release information enumerated in subsection (g). If the remaining documents were filed with the court, they must all be released under section 552.022(a)(17).

If the documents were not filed with the court, the D.A. may withhold the remaining information under section 552.108(a)(2), but release basic information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

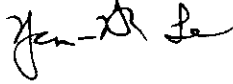
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 146497

Encl. Submitted documents

cc: Mr. John Benjamin Clopton, Jr.
P.O. Box 368
Venus, Texas 76084
(w/o enclosure)